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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

\$3,403 UNITED STATES CURRENCY,

Defendant;

MARK EZEB,

Defendant and Appellant.

A098268

(Alameda County
Super. Ct. No. 841932-7)

Appellant seeks to set aside an order of forfeiture entered by the trial court after his no contest plea to a violation of Health and Safety Code section 11350,¹ on the ground that respondent failed to prove the seized money was associated with a drug transaction. We conclude that appellant stipulated to the forfeiture as part of his plea, and affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On October 2, 2000, appellant entered a negotiated plea of no contest to the offense of possession of a controlled substance in violation of section 11350. One of articulated terms of the plea, as acknowledged by appellant, was that he was “to forfeit the cash that was taken in this case,” in the amount of \$3,403.

Appellant subsequently filed a claim opposing the forfeiture pursuant to section 11488.5. The trial court found that appellant was given notice of the forfeiture proceedings as required by section 11488.4, and agreed to forfeiture of the money. The amount of \$3,403 was therefore ordered forfeited pursuant to section 11488.5.

¹ All further statutory references are to the Health and Safety Code.

DISCUSSION

Appellant argues that respondent “never proved any charges” or “substantiated any claims” that the money was “earned” from the sale of drugs. He therefore maintains that the money was “illegally taken” in violation of his constitutional and statutory rights, and must be returned to him. Respondent submits that “appellant agreed to forfeit the money seized from him when he was arrested as part of the plea agreement,” and thereby waived the “requirement that the state prove the forfeiture case.”²

Sections 11470 through 11489 of the California Uniform Controlled Substances Act, “set forth the provisions of state law which allow for the seizure and forfeiture of property used for, and proceeds traceable to, unlawful drug transactions.” (*People v. \$400* (1993) 17 Cal.App.4th 1615, 1618.) “Section 11470, subdivision (h), provides that all right, title, and interest in moneys exchanged for a controlled substance, all proceeds traceable to such an exchange, and all moneys used or intended to be used to facilitate the manufacture, sale, possession for sale of a controlled substance, shall vest in the state ‘upon commission of the act giving rise to forfeiture’ (§ 11470, subd. (h).)” (*People v. \$241,600 United States Currency* (1998) 67 Cal.App.4th 1100, 1108.) “Such property ‘may be seized by any peace officer . . . without process . . . if . . . [t]here is probable cause to believe that the property was used or is intended to be used in violation of this division.’ (§ 11471.)” (*People v. \$28,500 United States Currency* (1996) 51 Cal.App.4th 447, 462.) If the “ ‘district attorney determines that the factual circumstances do warrant that the property seized . . . comes within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of law, the . . . district attorney shall file a complaint for forfeiture with the superior court . . . in which the property subject to forfeiture has been seized’ (§ 11488.4, subd. (a).) [¶] ‘No sooner than 10 days after a complaint is filed pursuant to this section, a claimant, who alleges standing based on an interest in the property which arose prior to the seizure or the filing of the

² Appellant’s motion to strike respondent’s letter brief is denied. This court previously granted respondent permission to proceed by way of a letter brief.

complaint for forfeiture, whichever occurs first, may move the court for the return of the property named in the claim on the grounds that there is not probable cause to believe that the property is subject to forfeiture pursuant to Section 11470.’ (§ 11488.4, subd. (g)(1).) In order to counter this claim, the prosecution must show that such probable cause exists. (§§ 11488.4, subd. (i); 11492, subd. (b).)” (*Ibid.*; see also *People v. \$400*, *supra*, at p. 1619.)

Appellant’s assertion that the prosecution failed to establish probable cause to believe the money was subject to forfeiture as traceable to an exchange for a controlled substance, is defeated by his voluntary stipulation to the forfeiture as part of his no contest plea. A “negotiated plea agreement, which results in the waiver of important constitutional rights, ‘is an accepted and integral part of our criminal justice system.’ [Citations.] Such agreements benefit the system by promoting speed, economy and finality of judgments. [Citation.] [¶] ‘When a guilty [or nolo contendere] plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement.’ [Citations.]” (*People v. Panizzon* (1996) 13 Cal.4th 68, 79-80; see also *People v. Walker* (1991) 54 Cal.3d 1013, 1024.) “ ‘Permitting waiver . . . is consistent with the solicitude shown by modern jurisprudence to the defendant’s prerogative to waive the most crucial of rights.’ [Citation.] ‘An accused may waive any rights in which the public does not have an interest and if waiver of the right is not against public policy.’ [Citation.]” (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 371.) If appellant may waive fundamental constitutional rights as part of a plea bargain, he may also waive his statutory rights to contest forfeiture of money. (See *People v. Aparicio* (1999) 74 Cal.App.4th 286, 289; *In re Uriah R.* (1999) 70 Cal.App.4th 1152, 1156-1157.)

To be enforceable, a defendant’s waiver of rights “ ‘must be knowing, intelligent, and voluntary.’ [Citations.]” (*People v. Aparicio*, *supra*, 74 Cal.App.4th 286, 289.) “Of course, before taking the plea, the trial court must admonish the defendant of the constitutional rights that are being waived, as well as the direct consequences of the plea.” (*People v. Panizzon*, *supra*, 13 Cal.4th 68, 80.) “ ‘To constitute a waiver, there

must be an existing right, knowledge of the right, and an actual intention to relinquish the right. [Citation.] “The waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right.”

[Citation.]’ [Citation.] ‘ “ ‘Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.’ [Citations.] The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and ‘doubtful cases will be decided against a waiver.’ ” [Citation.]’ [Citation.]” (*People v. \$241,600 United States Currency, supra*, 67 Cal.App.4th 1100, 1109.)

In his plea agreement appellant expressly and unambiguously waived his right to contest the forfeiture. At the change of plea hearing, both appellant and his counsel agreed in response to the trial court’s direct query that forfeiture of the seized money was one of the terms of the negotiated plea.³ Appellant does not now challenge the voluntariness of his plea, which was entered after a thorough admonishment of rights. Nor does the record indicate that appellant objected to the forfeiture condition when he was subsequently sentenced.⁴ Based upon the transcript of the change of plea proceeding we have before us, we find that appellant entered a knowing and voluntary plea, which included as one of its terms a forfeiture of the seized money. “ ‘As long as the record shows that the waiver was free, knowing and intelligent . . . , it must be upheld as a part of the plea agreement and the defendant will be forever barred from raising the . . . issue on appeal’ [Citation.]” (*People v. Berkowitz* (1995) 34 Cal.App.4th 671, 677.) Therefore, appellant has waived the right to complain in this appeal that the forfeiture failed to comply with the statutory requirement of probable cause to believe that the property is subject to forfeiture. (See *People v. Murillo* (1995) 39 Cal.App.4th 1298, 1304; *People v. Berkowitz, supra*, at p. 677.)

Accordingly, the judgment is affirmed.

³ The question of whether the forfeited money would be applied to the restitution fine was left to be resolved at the sentencing hearing.

⁴ We observe that if appellant had objected to the forfeiture at the time of sentencing, his remedy would have been to attempt to withdraw his plea. (See *People v. Hester* (2000) 22 Cal.4th 290, 296.)

Swager, J.

We concur:

Marchiano, P. J.

Margulies, J.